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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

September 15, 1997

ORIGINAL

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, DC 20554

**Re: Implementation of the Subscriber Carrier Selection Changes Provisions of the  
Telecommunications Act of 1996; CC Docket No. 94-129**

Dear Mr. Caton:

Enclosed herewith for filing are the original and sixteen (16) copies of MCI Telecommunications Corporation's Comments regarding the above captioned matter. Pursuant to the Commission's request, MCI is also submitting by separate cover a 3.5 inch diskette containing the enclosed comments.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Comments furnished for such purpose and remit same to the bearer.

Very truly yours,

Bradley C. Stillman

Enclosure  
BCS

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	
	)	CC Docket No. 94-129
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers'	)	
Long Distance Carriers	)	

To: The Commission

**COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION**

Bradley C. Stillman  
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Washington, DC 20006

Its Attorney

September 15, 1997

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## SUMMARY

As the Federal Communications Commission ("Commission"), consumers and the telecommunications industry all recognize, competitive choice provides myriad benefits that simply are unavailable in a monopoly market. However, with choice inevitably comes greater complexity and opportunity for both intentional and unintentional anti-competitive and anti-consumer behavior. With passage of the 1996 Act and the opening of all markets to competition, the stakes will rise. Indeed, the competitive and consumer concerns will likely grow more intense in light of the current structure which has the incumbent local exchange carriers ("incumbent LEC") responsible for executing preferred carrier (PC) changes for services for which they are, or will soon be, competing.

As a starting point for this review, MCI strongly believes that the Commission will find that the use of independent third-party verification ("TPV") and consideration of a neutral third party PC administrator can be even more valuable and potentially cost effective methods to protect competition and consumers in the post 1996 Act environment.

There is no question that the benefits of TPV, especially if applied to the industry at large, outweigh the costs. High quality, verifiable sales helps avoid costly customer service transactions necessary to deal with complaints. It also results in a reduction of costs associated with switching customers back to previous carriers, resolution of disputes, storage and handling of LOAs and dealing with regulatory or legal disputes. For MCI the bottom line is that TPV has generated higher customer satisfaction and reduced costly customer churn. These benefits would flow to the entire industry if TPV were adopted as the industry standard with the added benefit of increased public confidence in carrier integrity -- an issue of utmost importance as competition comes to new markets and consumers are forced to make more telecommunications choices.

MCI firmly believes that to achieve a fully competitive marketplace for all telecommunications services and to comply with the 1996 Act, the same verification standards should apply equally to all PC changes. Application of the same verification standards to all services would be best for avoiding or minimizing consumer confusion as competition develops in historically monopoly markets like local and intraLATA toll, it is also becoming an even more important competitive issue with each passing day. Therefore, to maximize the pro-competitive and consumer protection aspects of the PC change verification rules, the same rules should apply to all services and all providers equally.

MCI finds the proposed definitions for submitting and executing carriers acceptable. MCI also agrees with the tentative conclusion that executing carriers need not duplicate the verification efforts of the submitting carriers. Indeed, such a requirement will impose an unnecessary cost on carriers, make it more burdensome for consumers to exercise their choice and provide those executing a PC change to delay the process to disadvantage their competitors. It is not difficult to imagine a scenario where an incumbent LEC that is offering a competitive service would delay execution of a change to harm the relationship between the chosen carrier and their customer or to provide itself with an opportunity to take the customer away. These concerns are not simply theoretical. While doing testing for entry into the local market in at least two different RBOC territories, the incumbent made attempts to "win-back" or retain local customers won by MCI before MCI was even notified that the requested switch had been made.

MCI believes the post 1996 Act environment makes the application of independent third-party verification appropriate for all PC changes submitted by an incumbent LEC and essential for those submitted by an RBOC. With respect to PC changes that are both submitted and executed by an incumbent LEC (Notice at ¶15), MCI believes there can be no better use of

independent third-party verification. The local market power of the incumbent LECs is a virtual guarantee that abuses, intentional or not, will occur. As the incumbent LECs in general and the RBOCs in particular enter the interexchange market, the incentives that exist in their role as executing carrier of all switches will change. They can no longer be expected to operate as a neutral third party, and the Commission's rules must reflect this fact. Of course, under no circumstances should the Commission permit any executing carrier to be the verifier of a sale.

MCI supports the Commission's tentative conclusion (§19) that verification procedures should apply to in-bound as well as outbound calls. While MCI previously had concerns about the need to extend the verification rules to these calls, it has demonstrated that it can be done in a cost effective manner using TPV.

PC freeze rules are going to become more critical than ever as the last markets closed to competition are opened up and while the incumbent local monopoly is in control of executing virtually all carrier switches. MCI believes the Commission should use this rulemaking to:

- create regulations which bans deceptive solicitation of PC freeze commitments;
- establish non-discriminatory PC freeze processing practices for the incumbent LECs, so that they cannot discriminate against competitor carriers in favor of affiliates;
- prohibit the solicitation of PC freeze commitments by carriers for the first year following the initiation of competition in the local and intraLATA markets;
- establish TPV as an automatic override of a PC freeze.

In a competitive telecommunications market, allowing the incumbent LEC administration of the PC process is intolerable. In light of MCI's experience trying to open local markets to date, it is clear the incumbent LECs will use whatever means possible to get an advantage in the marketplace. The Commission will ultimately have to establish a third-party which would be

responsible for many of the critical roles currently handled by the incumbent LECs and, in some cases, the Commission.

An independent third-party could be responsible for some or all of the following:

- PC administration and PC processing, including order processing, in which the third party entity would receive electronic feeds from carriers and process the vast majority of switch activities so that underlying LECs would not have direct contact with or access to customer specific information;
- management of PC freeze, PC restrict, and other similar carrier freeze customer elections, and management of the process of releasing those customer protective measures, so that existing anti-competitive LEC management of these measures can be stopped;
- control of carrier access to customer LD, intraLATA and local carrier selection information, PC freeze information, BNA, etc., including the ability to provide all necessary information to other carriers on a non-discriminatory basis;
- conflict resolution, serving as an essential component for implementing the carrier to carrier liability provisions;
- non-discriminatory provision of information necessary to permit more effective billing of casual services, in the event that LECs are not held to the obligation to bill and collection for casual services;
- any other aspects that might benefit from a neutral administration approach.

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**COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION**

I. INTRODUCTION

MCI Telecommunications Corporation ("MCI") hereby submits its comments in the above referenced proceeding. As the Federal Communications Commission ("Commission"), consumers and the telecommunications industry all recognize, competitive choice provides myriad benefits that simply are unavailable in a monopoly market. However, with choice inevitably comes greater complexity and opportunity for both intentional and unintentional anti-competitive and anti-consumer behavior. With passage of the 1996 Act<sup>1</sup> and the opening of all markets to competition, the stakes will rise. Indeed, the competitive and consumer concerns will likely grow more intense in light of the current structure which has the incumbent local exchange

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<sup>1</sup>Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("1996 Act").



carriers ("incumbent LEC") responsible for executing preferred carrier (PC) changes for services for which they are, or will soon be, competing.

There is a tension between the ability to effectively market competitive services and the desire to protect consumers from bad actors. MCI believes the Commission can establish a set of unauthorized PC change rules as part of this proceeding<sup>2</sup> which strike an appropriate balance between competitive market realities and the manner in which consumers actually purchase telecommunications services.

Many of the concerns raised by increased competition in heretofore monopoly markets like local exchange service and intraLATA toll service as well as the eventual entry into the interexchange market by the regional bell operating companies ("RBOCs") makes review of Commission policies most timely. As a starting point for this review, MCI strongly believes that the Commission will find that the use of independent third-party verification ("TPV") and consideration of a neutral third party PC administrator can be even more valuable and potentially cost effective methods to protect competition and consumers in the post 1996 Act environment.

## II. PC CHANGE RULES AND SECTION 258 OF THE 1996 ACT

The Commission (Notice at ¶11) raises the question of whether current presubscribed

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<sup>2</sup>In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order on Reconsideration, CC Docket No. 94-129, Adopted July 14, 1997. ("Notice")

carrier change (PC change) verification rules should be applied to the local market in whole or part in light of the addition of §258 of the 1996 Act.<sup>3</sup> MCI firmly believes that to achieve a fully competitive marketplace for all telecommunications services and to comply with the 1996 Act, the same verification standards should apply equally to all PC changes. Application of the same verification standards to all services would be best for avoiding or minimizing consumer confusion as competition develops in historically monopoly markets like local and intraLATA toll. It is also becoming an even more important competitive issue with each passing day. Therefore, to maximize the pro-competitive and consumer protection aspects of the PC change verification rules, the same rules should apply to all services and all providers equally.<sup>4</sup>

Using different verification standards for different services simply invites questionable behavior or outright fraud. MCI has found that there is significant consumer confusion about the various types of calling (local, interexchange, local toll). Separate standards may permit bad actors to prey on this confusion to the detriment of consumers and the competitive marketplace. As the monopoly shackles are removed from more services, one provider will be offering an array of services. Indeed, many believe there will be a strong market for one-stop-shopping, where consumers obtain all services from a single provider of their choice. It would create an unnecessary burden on this type of marketing and consumer choice as well as an increased opportunity for bad acts to permit or require multiple verification standards depending on the

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<sup>3</sup>47 USC 258 ("No telecommunications carrier shall submit or execute a change in a subscriber's selection of provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.")

<sup>4</sup>As described *infra.*, the rules must recognize the unique position of the incumbent LEC as competition is in its nascent stages.

services involved. MCI believes verification standards that apply to all carrier switches will best fulfill the competitive mandate of the 1996 Act.

A. TPV is the Appropriate Industry Standard for Verification

Once the Commission agrees to apply the same verification standards to all services, the critical question is what those standards should be. Regardless of how many acceptable methods of verification the Commission chooses to permit, TPV, which is demonstrably the most consumer friendly and effective method should continue to be acceptable. As the Commission is aware, MCI has been the leading proponent, along with some state attorney's general and consumer groups, of the use of independent third-party verification. MCI currently uses this method of verification for virtually all residential and small business sales. MCI's experience has shown quite dramatically the effectiveness of responsibly operated third-party verification.

In 1992, MCI began using TPV to confirm all outbound telemarketing sales. Since 1996, MCI has used TPV to verify virtually all residential and small business sales.<sup>5</sup> The results have been dramatic. Each time TPV was applied to a new category of sales (i.e. outbound telemarketing, inbound telemarketing, direct sales etc.) MCI saw a positive impact on the quality of sales and a substantial reduction in the number of complaints. Today, approximately one half of one percent of all MCI residential and small business sales result in LEC reported PC disputes, and actual unauthorized conversions are a fraction of that amount. Many of these disputes

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<sup>5</sup>The agreement to use TPV for virtually all other residential and small business sales was part of a voluntary consent decree with the FCC which became effective August 1, 1996.

actually represent buyers remorse/changed mind situations, or spousal intervention (where one member of a household overrules another's decision to authorize an MCI sale).

There is no question that the benefits of TPV, especially if applied to the industry at large, outweigh the costs. High quality, verifiable sales helps avoid costly customer service transactions necessary to deal with complaints. It also results in a reduction of costs associated with switching customers back to previous carriers, resolution of disputes, storage and handling of LOAs and dealing with regulatory or legal disputes. For MCI the bottom line is that TPV has generated higher customer satisfaction and reduced costly customer churn. These benefits would flow to the entire industry if TPV were adopted as the industry standard with the added benefit of increased public confidence in carrier integrity -- an issue of utmost importance as competition comes to new markets and consumers are forced to make more telecommunications choices.

Since a consumer will ultimately have a choice of carriers for local, interstate and local toll services, the Commission should require that TPV be used for all services with separate verification for each service. This way, the consumer will have the opportunity to select one carrier for all services or multiple carriers at his or her discretion. However, the TPV provider should be able to verify all services on a single call so as to avoid unnecessary costs or wasting consumers' time with multiple verification calls.

#### B. Submitting vs. Executing Carrier Standards for Verification

The Notice (§13-15) raises questions about verification standards as applied to submitting carriers and executing carriers, including incumbent LECs. MCI finds the proposed definitions

for submitting and executing carriers acceptable.<sup>6</sup> MCI also agrees with the tentative conclusion that executing carriers need not duplicate the verification efforts of the submitting carriers. Indeed, such a requirement will impose an unnecessary cost on carriers, make it more burdensome for consumers to exercise their choice and provide those executing a PC change to delay the process to disadvantage their competitors. It is not difficult to imagine a scenario where an incumbent LEC that is offering a competitive service would delay execution of a change to harm the relationship between the chosen carrier and their customer or to provide itself with an opportunity to take the customer away.

It is critical that the Commission expressly prohibit executing carriers from imposing any additional hurdles (i.e. written LOAs, multiple methods of verification etc.) or steps beyond those permitted under the Commissions verification rules. In addition to being governed by non-discrimination requirements to prevent favoring their own affiliates, executing carriers must be prohibited from using their position as an opportunity to market any services to the switching customer.

These concerns about anti-competitive conduct by executing carriers are not simply theoretical. While doing testing for entry into the local market in at least two different RBOC territories, the incumbent made attempts to “win-back” or retain local customers won by MCI before MCI was even notified that the requested switch had been made. In BellSouth’s territory,

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<sup>6</sup>MCI believes the proposed amendments to §64.1160(a)(1) of the Commission’s rules needs to be clarified. Submitting carriers submit only an order, not a verification. The rules also should not imply that the executing carrier has any right or duty to review a verification. Specifically, the provision which states “[w]here the submitting carrier submits a verification that fails to comply with...,” should be changed to read, “[w]here the submitting carrier has not complied with §64.1160(a)...”

some of MCI's new local resale customers were sent a letter indicating that the requested switch of local carriers had been made, but which contained a phone number that the consumer was urged to call to have their service switched back to BellSouth.<sup>7</sup> These letters went to the customer before the date on which MCI was told the switch would occur. This anti-competitive conduct is especially damaging because it occurs without the competitors knowledge and before the competitor even has an opportunity to provide welcome materials to their new customer. In effect, BellSouth took steps to win back the customer even before MCI knew the customer existed.<sup>8</sup>

It is important to note that these problems have come during a testing phase involving relatively few customers, most of whom were MCI employees. This indicates the need to strictly prohibit communications between the incumbent LEC and the customer that has requested a switch until the newly authorized carrier has received adequate notification. This type of anti-competitive conduct can only be expected to increase as competition in the local market gets underway, especially since the executing carrier will, at least for some time to come, primarily be the incumbent LEC.<sup>9</sup> Any communication between an incumbent LEC and a customer that has

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<sup>7</sup>A copy of a letter and attached materials sent to Regina Keeney, Chief of the Common Carrier Bureau on August 5, 1997 which outlines the problem and includes a copy of the BellSouth letter is included as attachment 1.

<sup>8</sup>MCI has filed a formal complaint against Pacific Bell. See Complaint of MCI Telecommunications Corporation vs. Pacific Bell, File No. E-97-11, January 28, 1997. Because a formal complaint has been filed and a review is underway, MCI is not permitted to discuss the allegations in this proceeding.

<sup>9</sup>The anti-competitive risks are even greater if the incumbent LEC is required or permitted to do any sort of verification for a submitted PC change.

requested a PC change, including a "win-back" or retention letter or phone call, should be deemed illegal and anti-competitive on its face if sent or received before the actual switch has taken place or a reasonable amount of time has passed since the submitting carrier received notification that the switch has been made.

MCI believes the post 1996 Act environment makes the application of independent third-party verification appropriate for all PC changes submitted by an incumbent LEC and essential for those submitted by an RBOC. With respect to PC changes that are both submitted and executed by an incumbent LEC (Notice at ¶15), MCI believes there can be no better use of independent third-party verification. The local market power of the incumbent LECs is a virtual guarantee that abuses, intentional or not, will occur. As the incumbent LECs in general and the RBOCs in particular enter the interexchange market, the incentives that exist in their role as executing carrier of all switches will change. They can no longer be expected to operate as a neutral third party, and the Commission's rules must reflect this fact. Of course, under no circumstances should the Commission permit any executing carrier to be the verifier of a sale.

When the RBOCs and GTE were not permitted to enter the long distance business there was far less incentive to act in an improper fashion or misreport disputes as unauthorized changes to consumers, regulators or the press. As these companies gain entry into the long distance business, they will begin to have an ever greater interest in undermining the relationship between other interexchange carriers and their customers. Judging from the difficulties MCI and others have faced in entering local markets, all indications are that the incumbents will use whatever means are available to retain their current customers and add new ones.

Evidence already exists that anti-competitive conduct will occur, and the post 1996 Act

environment shows that these new opportunities and pressures to take advantage of one's role in effecting carrier switches will exist by virtue of the structure of the marketplace. Strong rules by the Commission can help relieve these pressures. The lines between verification, "win-back" and retention will surely be blurred and neither the Commission nor anyone else will be in a reasonable position to police incumbent LEC behavior. Furthermore, with tens of millions of annual switches, a case by case approach will be totally ineffective.<sup>10</sup> In any case, requiring independent third-party verification would be the prudent pro-consumer, pro-competitive course to take for all PC changes, but especially for those that are submitted and executed by an incumbent LEC and/or its affiliate.<sup>11</sup>

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<sup>10</sup>MCI has no objection to entering into private negotiations with another carrier in the event of a dispute about a switch before going to the Commission as required in §64.1160(a)(3) of the proposed rules. However, there needs to be some reasonable parameters to prevent one carrier from dragging its feet to delay Commission review or creating a burdensome process. Some further discussion including the possibility of the industry participants creating an arbitration forum with agreed upon rules that provides for expedited consideration may be appropriate. It would also be best to allow for resolution without a finding of fault to facilitate swift resolution.

<sup>11</sup>One of the concerns raised by the Commission with respect to TPV is the price associated with it. MCI's experience and its ability to stay competitive in the interexchange market should, once and for all, lay these concerns to rest. Furthermore, this is not a serious concern with the respect to the RBOCs and other large LECs that will have the benefits of economies of scale and scope at least as strong as MCI. In light of the proven track record of truly independent TPV, the consumer and competitive benefits far outweigh the costs. As the number of switches increase as competition is introduced to monopoly markets, the already strong cost-benefit ratio for TPV will continue to improve.



### C. Verification of In-bound Calls

MCI supports the Commission's tentative conclusion (§19) that verification procedures should apply to in-bound as well as outbound calls. While MCI previously had concerns about the need to extend the verification rules to these calls, it has demonstrated that it can be done in a cost effective manner using TPV. If the Commission were to apply verification rules to virtually all types of marketing except in-bound, it would practically be drawing a map for companies that seek to take advantage of consumers with questionable or illegal marketing practices.<sup>12</sup> Furthermore, as competition in the local market increases, it is likely that consumers, confused with the many choices of providers, could call one provider in search of another. One standard set of verification rules relying on TPV applied to all types of marketing will best protect unwitting consumers and prevent anti-competitive marketing schemes.

### III. PC FREEZE RULES

PC freeze rules are going to become more critical than ever as the last markets closed to competition are opened up and while the incumbent local monopoly is in control of executing virtually all carrier switches. MCI believes the Commission should use this rulemaking to:

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<sup>12</sup>As an example of ways to take advantage of consumer confusion, a Texas based long distance company KTNT registered names such as "I Don't Know," "Whoever," and "I Don't Care" in an effort to gain customers by default. See Palm Beach Post, August 19, 1997, Business Section page 4B.

- create regulations banning deceptive solicitation of PC freeze commitments;
- establish non-discriminatory PC freeze processing practices for the incumbent LECs, so that they cannot discriminate against competitor carriers in favor of affiliates;
- prohibit the solicitation of PC freeze commitments by carriers for the first year following the initiation of competition in the local and intraLATA markets;
- establish TPV as an automatic override of a PC freeze.

#### A. MCI's Experience With Anti-Competitive Use of PC Freezes

As outlined in its Petition for Rulemaking on this issue<sup>13</sup>, MCI believes PC freezes can be used as anti-competitive tools just as new markets are being forced open to competition. Even the limited experience to date of opening up markets to competition shows that incumbents misuse PC freezes during the vulnerable transition from monopoly to competition to shield their own customer base from competition and to refuse to implement carrier changes that customers clearly want. A PC freeze acts as a block to the typical method of executing customer switches of service, which today overwhelmingly occurs as follows: 1) a carrier makes a sale to a customer; 2) the carrier obtains the customer's authorization either verbally or in writing to switch his service; 3) the carrier may verify the sale through third party verification and 4) the carrier acts as the agent of the customer and implements that authorization by sending a carrier-to-carrier electronic feed to the LEC which accomplishes the switch.

Unlike the standards for verifying a sale, the mechanics of enrolling in PC freeze

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<sup>13</sup>In the Matter of Policies and Rules Pertaining to Local Exchange Carrier "Freezes" on Consumer Choices of Primary Local Exchange or Interexchange Carriers, CCB/CPD 97-19; RM - 9085, Petition for Rulemaking, MCI Telecommunications Corporation, March 18, 1997.

programs vary by LEC, as do the methods customers must use to release those restrictions.

Some LECs permit customers to obtain and release a PC freeze through verbal telephonic authorization. Some require written enrollment and release authorization. Some LECs even require that, to release authorization, the customer use only a specific form obtained from the LEC-- other written forms of customer authorization will be rejected.

Commission action is essential, especially during the critical transition from monopoly to competition in local and intraLATA toll services. Competition can best develop when consumer choice is easily accommodated -- without the inclusion of processes and procedures that unreasonably frustrate or foreclose this choice. The cumbersome PC freeze processes implemented by the LECs offer no legitimate consumer protection, while frustrating consumer choice and the development of competition. For full competition to develop, it is essential that the Commission adopt PC freeze rules that provide for the "level playing field" so essential to the development of effective competition, because would-be competitors in the local exchange market will need to access consumers through necessary contacts with the monopoly local exchange carriers.

The potential dangers posed by an incumbent LECs' misuse of its monopoly power in the context of soliciting PC freezes are graphically demonstrated by the recent practices of Ameritech and Southern New England Telephone Company (SNET). Ameritech has been ordered to implement intraLATA toll dialing parity in Michigan, Illinois, and Wisconsin. SNET, which is competing in the interLATA and intraLATA market, also was required to implement intraLATA toll dialing parity for all of its Connecticut customers. Not coincidentally, when these carriers began to face more effective competition in the markets they dominate, they took

aggressive steps to make it harder for their customers to change carriers for intraLATA and interLATA toll services through the use of PC freezes.<sup>14</sup>

The reality is that incumbent LECs strategically market PC freezes as a device to shield their own customer base from competition; that incumbent LECs use PC freezes to refuse to implement carrier changes to which a customer has already provided valid consent; and that customers are often not adequately informed of the significance of a PC freeze.<sup>15</sup> This strategic use of PC freezes belies the claim that incumbent LECs are using PC freezes to protect customers from unauthorized conversions.<sup>16</sup> In fact, the incumbent LECs are concerned about

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<sup>14</sup>Data available to MCI indicates that in recent months SNET and Ameritech have relied on PC freezes and other similar anti-competitive tactics to reject between 10% and 20% of all orders submitted by MCI for a change in carrier. In MCI's case, virtually all of these orders have been verified by independent third party verification. As a result, these are clearly valid sales that have been rejected for no legitimate reason. SNET and Ameritech rejection rates are significantly higher than the rates of other incumbent LECs. It seems quite likely, however, that other incumbent LECs would come to use PC freezes more aggressively as they are required to implement intraLATA toll dialing parity and to the extent that the RBOCs obtain authority to provide in-region interLATA services.

<sup>15</sup>MCI has conducted informal surveys which demonstrate that a majority of consumers who have PC freezes on their accounts either do not know these restrictions are in place, or never understood them in the first place.

<sup>16</sup>The comments of the incumbent LECs in opposition to MCI's Rulemaking Petition on PC freezes also highlights the need for Commission guidance in the administration of PC freezes. The comments prove MCI's contention that the mechanics of enrolling in PC freeze programs vary by LEC, as do the methods customers must use to release those restrictions, thus burdening consumers and carriers. For example, Southwestern Bell Telephone Company (SWBT) states that to change carriers once a PC freeze is in place, SWBT sends the customer a letter confirming the PC change request which the customer must sign and return before SWBT will process the request. However, Pacific Bell and Nevada Bell require the customer to contact one of their representatives and identify themselves by providing personal information which is noted in the credit history of the end user's account. And, BellSouth offers a 3-way conference call option between BellSouth, the customer and the new primary carrier. Commission rules would ensure uniformity and predictability for consumers and carriers with respect to the implementation and

protecting their own local, intraLATA and interLATA customer base, and their PC freeze practices are an additional tool used to justify the rejection of tens of thousands of valid orders by their existing customers to switch to a more competitive company of the customers choice.<sup>17</sup>

Meanwhile, available procedures to remove PC freezes are cumbersome and ineffective. Once MCI learns of sales that have been rejected because of PC freezes, it must engage customer service personnel to try to have the freezes removed by calling the new customers and setting up three-way conference calls with SNET representatives. Clearly, if MCI had known that a customer's PC was frozen during the initial sales call, when SNET sales representatives have this information, MCI could do what SNET presumably does -- conduct a three way conference during the initial telemarketing solicitation when the service was successfully sold. This discrimination ensures that only an incumbent LEC can wield PC freezes as a shield against competition, because the incumbent LEC has sole control of the mechanism for creating and removing PC freezes, as well as sole control of the information as to which customers have PC freezes.

MCI has faced a similar situation in Ameritech's territory, where a three way call is required after the sale to have the consumer's requested change executed. It is clear from reports of these conversations that customers are often unaware of the PC freeze and that Ameritech takes advantage of this opportunity to discourage the switch or sell other services to the

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removal of PC freezes.

<sup>17</sup> Data available to MCI in the first quarter of 1997 indicates that SNET had used PC freezes to reject approximately 2,000 MCI interLATA orders and 1,000 MCI intraLATA orders each month.

customer, even with the MCI representative on the line.<sup>18</sup>

MCI submits that the PC freeze practices described above constitute a violation of Section 201(b) of the Communications Act of 1934, as amended, which requires that all carrier practices be "just and reasonable." Incumbent LECs are exploiting their local monopoly power to insulate themselves from interexchange service competition and from potential local competition by impeding the ability of consumers to move easily from their affiliated companies to other carriers. PC freezing also results in substantial confusion among consumers at a time when significant and complex telecommunications changes are occurring and will continue to occur. Public interest factors require, then, that the Commission take action to eliminate this confusion whenever it arises as a result of carrier undertakings designed to fuel such confusion or which, in fact, result in confusion.

Accordingly, the Commission must provide guidance on the proper procedures for implementing and removing PC freezes and, specifically, it should adopt the rules proposed by MCI. In addition, to ensure that the PC freeze mechanism is not used to frustrate intraLATA toll and local competition before it has a chance to fully develop, MCI supports AT&T's call for a prohibition against solicitation and implementation of local carrier selection freezes by the dominant local carrier and a prohibition against solicitation on intraLATA PC freeze commitments by incumbent LECs for one year following the availability of 1+ intraLATA toll

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<sup>18</sup>On one three-way conversation, a customer was trying to get their intraLATA toll service switched to MCI. The Ameritech representative asked the customer why she was switching to MCI and whether Ameritech had done anything wrong. The Ameritech representative also asked the MCI representative what the rate being offered was. In another incident, while the PC freeze was being removed and the change executed, the Ameritech representative began trying to sell local services like caller I.D. and three way calling.

dialing parity.<sup>19</sup> The same prohibition should be in place when an incumbent LEC enters the interexchange market in their home territory. The California PUC has prohibited LECs from soliciting PC freezes during the introduction of intraLATA presubscription in California, and the Commission should apply this to all LECs nationwide.

#### B. Appropriate PC Freeze Standards

The Notice at ¶23 makes a tentative conclusion that a PC freeze is acceptable if as long as a carrier “mails to a subscriber (a) an explanation of a PC freeze, (b) an explanation of the subscriber’s right to request such a freeze for its telecommunications service, and (c) advice on how the subscriber can obtain a PC freeze.” While these requirements represent good steps toward balancing the interest of protecting consumers and facilitating maximum competition for all telecommunications services, it is clearly not enough. As noted *supra.*, the executing carrier in a competitive market environment will always have an incentive to encourage PC freezes for its customer base. To protect against the kind of anti-competitive abuses that have already appeared with respect to PC freezes, the Commission’s rules must also require the consumers are informed of the effect of such a freeze on their ability to choose an alternative provider and what steps are necessary to nullify, change or override a freeze.

Unless and until an independent third-party is administering PC freezes, there will be significant opportunity for misleading or outright fraudulent marketing of PC freezes. As the

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<sup>19</sup>Comment of AT&T in RM 9085, CCB/CPD 97-19.

RBOC's gain entry into the interexchange market they will maintain the primary role as executing carrier for switches and PC freezes. The RBOC's incentive to market freezes aggressively to their new long distance customers and use different standards for placing and removing PC freezes depending upon the identity of the submitting carrier will increase. To help guard against this potential anti-competitive barrier to vigorous competition in all markets, the Commission should consider requiring the use of standard language to describe PC freezes, how they work, their impact on the ability to switch carriers and how they can be removed. Furthermore, as consumers begin to have different services marketed to them, it would be a very useful consumer and competitive protection if standard definitions for different types of services (i.e. interstate, local, inter and intraLATA etc.) were developed and used.

The Commission raises an important issue regarding how a PC freeze should be treated when a consumer switches LECs. (Notice at ¶24) The decision whether to offer a PC freeze is ultimately up to each individual local service provider. It is an agreement between one carrier and its customer. While many carriers may see it as an opportunity to offer consumers a specific consumer protection, that agreement should not automatically be carried over to subsequent LECs after a switch. The reality is that most carriers will likely offer such a service, but it would create less confusion and fewer mistakes if the customer and the new carrier had to affirmatively agree to put a PC freeze in place.

Automatic carry over of PC freezes would force the new entrant to rely on their incumbent LEC competitor to tell them whether a PC freeze exists, for which services it exists etc. The new carrier could inadvertently or intentionally be left liable for a change which occurs when a PC freeze was supposed to be in place but they were not informed by the LEC that lost



the customer. Of course, there may also be anti-competitive incentives which would lead to misbehavior in an effort to make a competitor look bad. MCI believes requiring a new PC freeze when a consumer changes LECs will go a long way to avoiding these problems. Furthermore, since TPV has been shown to be an extremely effective means of verifying a sale, the Commission's rules should provide that a TPV sale which meets the standards established in this proceeding should override a PC freeze. This will assure that the consumer's choice remains paramount, not the interests of the incumbent carrier.

With respect to judging the lawfulness of a PC freeze solicitation (§25), MCI finds the Commission's tentative conclusions agreeable and in line with its previous request for a rulemaking on this issue.<sup>20</sup> However, as indicated above, there should also be the additional factor of whether a consumer was clearly informed about how to cancel or otherwise avoid its PC freeze.

#### IV. LIABILITY ISSUES

##### A. Liability of Subscriber to Carriers and Offending Carriers to Authorized Carrier

With respect to issues of liability, the goal of the Commission's rules should always be to make the victim whole. That includes, of course, both the consumer and their chosen carrier.

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<sup>20</sup>In the Matter of Policies and Rules Pertaining to Local Exchange Carrier "Freezes" on Consumer Choices of Primary Local Exchange or Interexchange Carriers, CCB/CPD 97-19; RM - 9085, Petition for Rulemaking, MCI Telecommunications Corporation, March 18, 1997.